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FREEHILL HOGAN & MAHAR, LLP
Attorneys for Plaintiff
80 Pine Street
New York, NY 10005
(212) 425-1900 (T) (212) 425-1901 (F)
Peter J. Gutowski, Esq.
Edward Carlson, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PHOENIX BULK CARRIERS, LTD.,

Plaintiff,

- against -

AMERICA METALS TRADING, LLP

Defendant.

10 Civ. 2963 (NRB)

DECLARATION OF EDWARD COLL

I, Edward Coll, declare and state as follows:

1. I am the President of Phoenix Bulk U.S. a shipping company based in Rhode Island which acts as an agent for the Plaintiff Phoenix Bulk Carriers Ltd. ("Phoenix").

2. I submit this declaration in opposition to the Defendant America Metals Trading's ("AMT") motion for countersecurity and in response to the comments contained in the declaration of Eduardo M. Monteiro.

3. Phoenix's claims, as set out in the complaint, relate to three charter contracts in 2008, all of which were performed and all of which involve outstanding demurrage.

4. For the Court's guidance, Defendant AMT has never challenged its indebtedness to Phoenix on two of the contracts, and as far as I can tell, it is simply a situation where AMT has declined to pay.

5. On the third contract, AMT has declined to pay the demurrage on the basis there was a force majeure event which minimized its demurrage obligation, although the force majeure event which it relies upon occurred and ended long before the vessel arrived and therefore provides no basis for the defense.

6. It is Phoenix's considered view that the sums on which Phoenix has made claim and on which we have obtained security, all of which are the subject of arbitration, would hardly qualify as claims in the sense that AMT owes this money and there is no legitimate basis for any defense.

7. There are no counterclaims by AMT under the three 2008 charters which form the subject matter of Phoenix's claim.

8. Insofar as the AMT counterclaim is concerned, this involves two fixtures (charters) from 2007 which were negotiated and finalized on March 23, 2007.

9. Those contracts have no relationship to the 2008 contracts on which Phoenix has made claim, and they share no common facts.

10. They involve different voyages, from different years, for different cargoes, and have absolutely no connection or relationship whatsoever. The 2008 contracts relate to demurrage claims. The claims by AMT relate to voyages never performed due to conditions at the loadport which precluded loading from the designated berths. There is nothing in common between the two sets of claims.

11. I appreciate that it is not the subject of this application to review the facts of these claims, but I should add that the voyages contemplated under the March 23, 2007 contracts on which AMT makes claim were cancelled due to a valid force majeure/conditions at the loadport,

and AMT has never (until the very recent time) made any quantified claim against Phoenix for a purported breach of those contracts.

12. To the contrary, the assertion of those "claims" seems to have been a mere reaction to the fact that Phoenix had to finally commence proceedings to collect the amounts due from AMT under the 2008 contracts.

13. In any event, there is no relationship between the contracts whatsoever.

14. Finally, I have reviewed the Monteiro Declaration and note that he makes reference to numerous other contracts with different parties (including non-party National Material Trading or "NMT"), and goes on to suggest that these other contracts somehow render the Phoenix contract claims from 2008 and the AMT claims from 2007 all part of some "multi-year vessel chartering relationship" evidencing an "inter-relatedness" between all of these contracts which somehow renders them all connected to each other. The position is inaccurate.

15. Over the years, Phoenix has entered into contracts with numerous other entities including NMT, but each voyage contract is a separate and distinct contract.

16. It is accurate that in 2004, NMT owed Phoenix a sum of money which NMT agreed to pay through a commercial workout, which is not at all unusual in the context of maritime trade.

17. That commercial workout with non-party NMT in 2004 has no relationship to the contracts in 2007 or 2008, or AMT for that matter (who did not even appear on the scene until several years later).

18. I also note that Mr. Monteiro makes reference to the fact that AMT owed Phoenix money under a contract slated for performance in January 2009, which AMT did not perform.

Subsequent to that, Phoenix did charter the M/V CLIPPER MONARCH to NMT, which vessel managed to lift combined shipments of cargo and whose performance, due to an arrangement worked out between NMT and AMT, was acceptable to Phoenix in partial satisfaction of the January non-performance. What the relationship was between NMT in 2009 with AMT which enabled them to coordinate this situation is outside my knowledge, but presumably NMT had some indebtedness to AMT which was reduced or eliminated by NMT's actions in the charter of the Clipper Monarch. But that situation in 2009 does not in any way mean that claims under the 2008 contracts are somewhat "logically" connected to 2007 contracts upon which AMT has lodged its counterclaim.

19. Each of the contracts Phoenix entered into is a separate and distinct agreement and there is no inter-relatedness between them. The fact that a party who owes Phoenix money may subsequently propose a settlement by doing other business or increasing payments on a subsequent voyage does not render these contracts as having all been inter-related.

20. Phoenix, like most commercial entities, looks to resolve claims in as expeditious and economical a fashion as possible and if a debtor proposes something which is reasonable, like a commercial workout, Phoenix will always review it and in some case, may enter into such an arrangement. But that does not make the separate voyage charters which Phoenix enters into each related to each other.

I declare under penalty of perjury, the laws of the United States of America and pursuant to 28 U.S.C. §1746 that the foregoing is true and correct.

Executed this 29th day of July, 2010
at Middletown, Rhode Island

Edward Coll